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degree, and brings error. Judgment reversed, verdict set aside, and case remanded.

W. M. Murrell and *Duncan Drysdale*, both of Lynchburg, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., and *A. H. Light*, of Rustburg, for the Commonwealth.

HUGO et al. v. CLARK.

June 12, 1919.

[99 S. E. 521.]

Witnesses (§ 199 (4)*)—Privileged Communications—Attorney and Client—Death of Client.—To show revocation of a will, in a contest between heirs of deceased, claiming he died intestate, and one claiming under that will, one who as attorney drew a later will may testify, not only as to its execution, but as to its contents, as expressly revoking the first, especially where he was a subscribing witness thereto, as against objections of confidential communications; the rule of privilege not obtaining in such circumstances.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 144.]

Appeal from Circuit Court of City of Norfolk.

The will of Cyrus Warden, deceased, in favor of Eva Catherine Clark, was contested by Randolph B. Hugo and others. From an adverse judgment, they appeal. Reversed and remanded.

J. G. Martin, Harry E. McCoy, and *W. S. Morris, Jr.*, all of Norfolk, for appellants.

Thomas H. Willcox and *A. Johnston Ackiss*, both of Norfolk, for appellee.

SMALL v. VIRGINIA RY. & POWER CO.

June 12, 1919.

[99 S. E. 525.]

1. Street Railroads (§§ 98 (5), 102 (2)*)—Injuries on Track—Contributory Negligence and Proximate Cause—Questions for Jury.—In an action for injuries to a bicycle rider who fell into an excavation between street railway tracks and was struck by a street car while attempting to arise, questions whether he was guilty of negligence,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and whether such negligence was the proximate cause of the accident, held for the jury.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 842, 846.]

2. Trial (§ 169*)—Direction of Verdict.—Action of the trial court in sustaining the objection of counsel for defendant to the argument of plaintiff's counsel on the ground that it was in conflict with the instruction given for defendant held tantamount to direction of verdict for defendant.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 627; 14 Va.-W. Va. Enc. Dig. 1067.]

3. Trial (§ 171*)—Direction of Verdict—Statutes.—Despite Acts 1914, c. 331, requiring disregard of harmless error, under Acts 1912, c. 27, in no action tried by a jury may the trial judge give a peremptory instruction directing what verdict shall be rendered, though other than in the matter of directing verdict trial courts have the same power in giving and refusing instructions that they possessed before the act was passed.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 627; 14 Va.-W. Va. Enc. Dig. 1067.]

4. Street Railroads (§ 118 (15)*)—Instructions—Last Clear Chance.—In an action against a street railway for injuries to a bicycle rider thrown into an excavation between tracks and struck by a car while trying to rise, instructions requested by plaintiff on the doctrine of last clear chance held improperly refused, being supported by plaintiff's evidence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 389; 16 Va.-W. Va. Enc. Dig. 982; 17 Va.-W. Va. Enc. Dig. 757.]

Error to Law and Chancery Court of City of Norfolk.

Action by B. T. Small against the Virginia Railway & Power Company. To review judgment for defendant, plaintiff brings error. Reversed, and cause remanded for new trial.

E. R. F. Wells, of Norfolk, for plaintiff in error.

A. D. Christian, of Richmond, *W. H. Venable*, of Norfolk, and *E. R. Williams*, of Richmond, for defendant in error.

SHELTON *v.* SHELTON.

June 12, 1919.

[99 S. E. 557.]

1. Divorce (§ 158*)—Restrictions on Remarriage—Abandonment.—Court, in granting divorce for abandonment, was not authorized

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.